

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

ASSOCIATION OF PROFESSORS OF THE
UNIVERSITY OF OTTAWA (APUO)

Applicant
(Responding Party)

and

UNIVERSITY OF OTTAWA

Respondent
(Moving Party)

FACTUM OF THE RESPONDING PARTY
(Motion to Strike)

Date: September 24, 2015

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OVERVIEW

1. This is a motion, brought by the Respondent University of Ottawa (the “University”) to strike an affidavit or portions of an affidavit.
2. The position of the Respondent is that the Applicant is not entitled to set out information in its affidavit about what took place during the hearing, regardless of whether that information would otherwise be apparent on the face of the record.

PART I – FACTS

The Grievances

3. Professor Denis Rancourt was a tenured Professor with the University. He was a member of the Respondent Union, the Association of Professors at the University of Ottawa (“APUO”).
4. At issue in this judicial review were three grievances brought by the University relating to Professor Rancourt’s employment.
5. The first grievances concerned a reprimand letter blaming Professor Rancourt for not having taught the approved course content in the course SC11101, Science in Society.

Decision of Arbitrator Foisy dated January 27, 2014 (“Arbitrator Decision”), para 1: **Moving Party Motion Record (“MPMR”), Tab 4, p 39**

6. The second grievance concerned course PHY 1722, and involved a letter of reprimand for violating Article 21.1.(c) of the Collective Agreement , which requires “objective evaluation” of students’ performance.

Arbitrator Decision, para 2: **MPMR, Tab 4, p 39**

7. The third grievance concerned the dismissal of Professor Rancourt in December of 2008 on the ground that he had not objectively graded his students, as required by Article 21.1.(c), in the course PHY 4385/5100.

Arbitrator Decision, para 3: **MPMR, Tab 4, p 39**

8. All three grievances were referred to a hearing in front of Arbitrator Claude Foisy (the “Arbitrator”).

Arbitrator Decision: **MPMR, Tab 4**

The Arbitrator's Decision

9. On January 27, 2014, the Arbitrator released his decision (the "Decision"). The Arbitrator allowed the first grievance, but denied the second and the third grievances. He held that Professor Rancourt had not graded his students objectively. The Arbitrator concluded that the University had sufficient grounds to dismiss Professor Rancourt.

Arbitrator Decision: **MPMR, Tab 4**

10. There was no transcript or record of the hearing produced in this matter.

APUO Seeks Judicial Review

11. On May 7, 2014, APUO brought an application for judicial review, seeking to have the Arbitrator's decision quashed on the following grounds:
 - (a) The Arbitrator erred in law and/or came to an unreasonable conclusion when he failed to appropriately assess and apply the principles of academic freedom to the facts before him. In addition to the general failure or refusal to consider the principles of academic freedom, the arbitrator refused, or failed to consider, and/or unreasonably rejected jurisprudence confirming that a professor's grading method is protected by academic freedom and the academic freedom provisions of the collective agreement. The principles of academic freedom include the right of a professor to determine which factors should be considered in a grading scheme and what weight ought to be given to those factors. The only limit to academic freedom within the context of student grading is that grading must be done in an objective fashion. The Arbitrator's failure to consider the imperative role that academic freedom played in Professor Rancourt's case resulted in a reviewable error.
 - (b) The Arbitrator also denied the applicant natural justice and procedural fairness, and erred in law by inappropriately relying on a report prepared by Ms. Maureen Robinson. This report allegedly summarized Professor Rancourt's public statements and appearances concerning his grading scheme. The employer referred to the document on numerous occasions as a "transcript". The Arbitrator erred in relying upon this report for five reasons:

- (i) During the hearing, the Arbitrator upheld an objection, made by the Applicant, to the admissibility of the report. The parties agreed (and the Arbitrator ruled) that the report would not be admitted as proof of any of its contents, but merely as an aide memoire to assist the Arbitrator during the Respondent's cross-examination of Professor Rancourt. The Arbitrator therefore erred by quoting the report in his decision as a piece of evidence. This use was contrary to his earlier ruling that it was deemed inadmissible as evidence of the truth of its contents;
 - (ii) The author of the report, Maureen Robinson, was not a witness in the arbitration and thus could neither authenticate the report nor be cross-examined by the Applicant;
 - (iii) The Arbitrator did not consider Maureen Robinson's documented bias against Professor Rancourt. While the Respondent was preparing disciplinary action against Professor Rancourt, Ms. Robinson had been hired by the Respondent to monitor Professor Rancourt's activities, both within and outside the University of Ottawa. This surveillance included Ms. Robinson creating a false Facebook account with the hopes of monitoring Professor Rancourt, and following him to off-campus events, as far afield as Queen's University. She also sent e-mails to the Respondent (which were produced in the Arbitration) admitting that she had a personal grudge against Professor Rancourt and likening her surveillance to posing as a young girl to catch a pedophile;
 - (iv) The Arbitrator ignored (or, alternatively, failed to give sufficient weight to) Professor Rancourt's testimony that significant portions of the content of his speech (which were "recorded", according to Ms. Robinson's report) were missing from Ms. Robinson's report, and that, in particular, the context and true sense of his comments were not present. The Arbitrator also ignored (or, alternatively, unreasonably failed to give sufficient weight to) Professor Rancourt's testimony that his public comments were meant to be provocative in order to engage the audience in a constructive discussion and were not representative of his actions in the classroom;
 - (v) The Arbitrator ignored or failed to deal with the fact that the University did not rely on any "procedural rules adopted by a faculty council and approved by Senate" within the meaning of the collective agreement.
- (c) The Arbitrator denied the applicant natural justice and procedural fairness, and erred in law by refusing or failing to consider the testimony of Dr. André Lalonde, Dean of the Faculty of Science, confirming the parameters of Professor Rancourt's grading. Those errors include, but are not limited to, the following:

- (i) The Arbitrator erred in law and/or came to an unreasonable decision by failing to consider or give sufficient weight to Dean Lalonde's evidence confirming that the University of Ottawa does not require professors to mark on a bell curve, that there is no minimum or maximum value for the class average, nor is there a range in which the average or median mark is required to fall;
 - (ii) The Arbitrator erred in law and/or came to an unreasonable conclusion by failing to consider or give sufficient weight to the evidence of Dean Lalonde when deciding that "other factors" (considerations other than written exams) are of minor importance in the overall student evaluation process, when the only evidence from Dean Lalonde, was that these factors could be considered, and that the only factor he noted would receive little weight was attendance;
 - (iii) The Arbitrator erred in law and/or came to an unreasonable decision by failing to consider or give sufficient weight to the evidence of Dean Lalonde that it was within a professor's right, so long as there was an objective evaluation, to determine which factors would be considered in a grading scheme and the weight assigned to each of those factors.
- (d) The Arbitrator made an unreasonable finding of fact when he determined that Professor Rancourt awarded each student a grade of A+ on the first day of class in the absence of any evaluation. The Arbitrator made a reviewable error in the following ways:
- (i) The Arbitrator made contradictory findings about whether the grade of A+ was awarded on the first day of class in the absence of evaluation;
 - (ii) The Arbitrator failed to consider the evidence and came to an unreasonable conclusion that Professor Rancourt had not evaluated students objectively in the course PHY1722. This includes the failure to consider that Professor Rancourt in fact assigned a range of marks including a C and a number of Bs in this course;
 - (iii) The Arbitrator made no distinction between PHY1722 and PHY 4385/5100. Having determined unreasonably that Professor Rancourt had failed to evaluate students objectively in PHY1722, he concluded that the same was true of the latter course;
 - (iv) Since the conclusion regarding PHY1722 is unreasonable, the arbitrator neither considered, nor did he apply, the principles of progressive discipline;
 - (v) The Arbitrator came to an unreasonable conclusion when he decided that Professor Rancourt had made a promise that students in the course PHY 4385/5100 would get an A+ regardless of their work in the class. This included failing to deal with corroborated evidence that Professor Rancourt had to intervene when students were not performing at a level that would justify a high grade and in accordance with the requirements of the course, and that he worked

throughout the duration of the course to ensure students performed at an acceptable level in order to obtain this mark;

- (vi) The Arbitrator ignored or failed to consider evidence that other senior and graduate level courses had grades that were exclusively As, but that no action was taken against the professors in those cases;
 - (vii) Similarly, the Arbitrator ignored or failed to consider evidence that the University had approved the grades in PHY 4385/5100, and took no steps to change them as a result of any of the actions at issue during the arbitration;
 - (viii) The Arbitrator ignored, or failed to come to a reasonable conclusion on, the evidence when he determined that Professor Rancourt had failed to mark objectively.
- (e) The Arbitrator acted unreasonably when he determined that the actions of Professor Rancourt, a tenured, full professor at the University of Ottawa, should result in the termination of his employment.

Notice of Application for Judicial Review: **MPMR, Tab 5, para 5(e), p 76**

12. In support of this Application, APUO filed an affidavit sworn by Natasha Udell (the “Udell Affidavit”). Ms. Udell was legal counsel at APUO at the time of the hearing in front of the Arbitrator. She was present at the arbitration dates during which the events described in the affidavit occurred.

Affidavit of Natasha Udell sworn April 30, 2014 (“Udell Affidavit”), paras 1 & 2: **MPMR, Tab 3, p. 30**

The University Seeks to Strike the Udell Affidavit

13. The University seeks to strike the Udell Affidavit. In support of that motion, it filed an affidavit sworn by Celine Delorme (the “Delorme Affidavit”), an associate at the law firm which represented the University at the hearing.

Affidavit of Celine Delorme sworn November 3, 2014 (“Delorme Affidavit”): **MPMR, Tab 2, p 7**

14. APUO intends to rely upon the Udell Affidavit, the Decision and the Notice of Application filed by APUO.

PART II - ISSUES

15. The only issue in this motion is whether the Applicant is entitled to adduce facts in a judicial review application that relate to the conduct of the hearing but are not apparent on the face of the record.

PART III - SUBMISSIONS

Courts Allow Affidavit Evidence When Necessary to Determine the Absence of Evidence for the Decision Under Review

16. Section 2(3) of the *Judicial Review Procedure Act* (the “JRPA”) empowers courts to set aside a decision of an administrative decision-maker where there was no evidence before it on which to base its decision.

Section 2(3) Judicial Review Procedure Act, R.S.O. 1990, c. J.1: Schedule B

17. The leading case on the admissibility of affidavit evidence upon judicial review is *Keeprite Workers' Independent Union v. Keeprite Products Ltd* (“Keeprite”). According to *Keeprite*, affidavit evidence is admissible on judicial review to show there was no evidence to support

findings of fact made by the decision maker as outlined in the *JRPA*, or to show there was a complete absence of evidence, which would amount to a jurisdictional error.

Keeprite Workers' Independent Union v. Keeprite Products Ltd., 1980 CarswellOnt 762, 29 O.R. (2d) 513 (Ont. C.A.) [*"Keeprite"*] at para 20: **Responding Party Book of Authorities ("RPBOA")**, **Tab 1**

18. The *Keeprite* test was clarified by *142445 Ontario Ltd. v. I.B.E.W., Local 636*, which held that "affidavit evidence can be admitted either to show an absence of evidence on an essential point, or to disclose a breach of natural justice that cannot be proven by mere reference to the record."

142445 Ontario Ltd. v. I.B.E.W., Local 636, 2009 CarswellOnt 2701, 251 O.A.C. 62 at para 18 [*"Utilities Kingston"*]: **RPBOA, Tab 2**

19. Where the allegation is that there is an absence of evidence in violation of the first ground for finding admissible evidence under *Keeprite*, the test for assessing the absence of evidence is two-fold:
- (a) Whether the affidavit material demonstrates that there was "no evidence to support a finding of fact" and
 - (b) Whether the evidence relates to a fact that is essential to the decision.

Utilities Kingston, supra at para 37: **RPBOA, Tab 2**

20. There are a number of cases where affidavit evidence has been not only permitted, but necessary in order for the judicial review of an arbitrator's decision to be possible.
21. In *Professional Institute of the Public Service of Canada v. Unifor, Local 3011*, Unifor brought a motion to strike various paragraphs and exhibits contained in an affidavit filed by the

Professional Institute of the Public Service of Canada (“PIPSC”) in support of its application for judicial review of an arbitrator’s decision.

22. PIPSC’s application for judicial review was premised on its view that the arbitration was to have proceeded in two phases, with the second phase only occurring if the arbitrator found against PIPSC at the first phase. The arbitration decision, however, dealt with both issues, and PIPSC argued that the arbitrator had improperly relied on the report of one of Unifor’s experts. PIPSC sought to attach the report to its affidavit. PIPSC argued that in relying on this information, the arbitrator had exceeded his jurisdiction and breached the rules of natural justice and procedural fairness.
23. In applying the *Keeprite* test, the Court determined that an inference could be drawn that the arbitrator had in fact considered evidence that was not properly in front of him in making his decision. The court found, “It strikes me as fair, in these circumstances, to allow the PIPSC to include in its materials the report and the references to it so that its argument on breach of natural justice can be fully understood and considered by the court”.

Professional Institute of the Public Service of Canada v. Unifor, Local 3011, 2015 ONSC 3748 at para 12 [“PIPSC”]: **RPBOA, Tab 3**

24. Similarly, in *Denby v. Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal)*, the motions judge allowed affidavit evidence to be admitted on an application for judicial review stating that “the Applicants will be prejudiced in their endeavor to argue the correctness, or lack of correctness, of the Tribunal’s decision because of the lack of an official transcript or an audio recording of the proceedings.”

Denby v. Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal), 2005 CarswellOnt 6724, 204 O.A.C. 146 at para 12 [“Denby”]: **RPBOA, Tab 4**

25. Furthermore, the motions judge noted that the Applicants must be provided a chance to effectively argue their case, something they would not be able to do effectively without some evidence of what actually transpired before the court.

Denby, supra at para 13: **RPBOA, Tab 4**

26. In *Brookfield Lepage Johnson Controls Facilities Management Services Ltd. v. Ontario (Labour Relations Board)*, the court reached the same conclusion in choosing to admit affidavits on judicial review, noting "...it is necessary and appropriate in the interests of a proper and fair Judicial Review to have a record of relevant evidence, to the extent this is reasonably possible".

Brookfield Lepage Johnson Controls Facilities Management Services Ltd. v. Ontario (Labour Relations Board), 2007 CarswellOnt 709, 221 O.A.C. 70 ["*Brookfield*"] at para 37: **RPBOA, Tab 5**

27. While the later case of *Warren v. Ontario (Labour Relations Board)* appears to have criticized *Denby* and *Brookfield* alleging they expanded the *Keeprite* test in a manner that was not intended, *Warren* itself admitted parts of an affidavit that it held attempted to prove a denial of procedural fairness not apparent from the record.

Warren v. Ontario (Labour Relations Board), 2012 ONSC 1735, 2012 CarswellOnt 4796: **RPBOA, Tab 6**

The Arbitrator Relied on Evidence That was Not Before Him

28. As outlined above, the first circumstance in which affidavit evidence will be admissible on an application for judicial review is to show a decision was made in the absence of evidence on an essential point.

JRPA, supra at s.2(3): **Schedule B**

Keeprite, supra at para 20: **RPBOA, Tab 1**

29. APUO's position is that the arbitrator improperly relied on Ms. Maureen Robinson's report as evidence in reaching his final decision, despite having upheld APUO's objection with respect to the admissibility of the report. Furthermore, APUO submits that there was no evidence before the arbitrator with respect to any policy or procedural rules adopted by a faculty council and approved by the Senate within the meaning of the collective agreement, as there is currently no policy about grading at the University beyond a Senate rule regarding how to equate a letter grade to a percentage.
30. Ms. Robinson's "report", which was not properly in evidence, negatively depicted a speech given by Professor Rancourt at Queen's University. The University proffered no other evidence in support of its position that Professor Rancourt's Queen's University speech was in any way inappropriate. In the absence of the report, which was in front of the arbitrator only as a memory aid, there was no evidence on the record upon which the arbitrator could have found Professor Rancourt acted inappropriately during his speech at Queen's University.
31. Nonetheless, the arbitrator found that Professor Rancourt had engaged in improper actions with his speech at Queen's University. This was an essential fact in the arbitrator's decision to uphold Professor Rancourt's dismissal. Without the report, there was insufficient evidence to uphold the dismissal of Professor Rancourt.
32. Accordingly, the arbitrator's decision was based on evidence that was not before him. He thus made a crucial finding of fact which was unsupported by evidence.

33. There is, however, no transcript available that demonstrates that there was no evidence upon which the arbitrator could have based his findings, nor to outline the ruling of the Arbitrator regarding the reasons for which he would rely on the document from Ms. Robinson. As such, the affidavit of Natasha Udell, in particular paragraphs 3-13, and 29-30, are necessary for the reviewing court to see that the arbitrator's decision was made without any evidence supporting it.
34. This is the first circumstance anticipated by *Keeprite*, and subsequently *Utilities Kingston*, for when it is appropriate to admit affidavit evidence on judicial review: to show an absence of evidence on an essential point.

Keeprite, *supra* at para 20: **RPBOA, Tab 1**

Utilities Kingston, *supra* at para 18: **RPBOA, Tab 2**

Affidavits Are Admitted in the Review of a Breach of Natural Justice

35. The Supreme Court of Canada has classified some of the grounds that might constitute a breach of natural justice. In so doing, it has held that it is possible for the rejection of relevant evidence to have such an impact on the fairness of a proceeding, that it leads unavoidably to the conclusion that there has been a breach of natural justice.

Syndicat des employés professionnels de l'Université du Québec à Trois-Rivières c. Université du Québec à Trois-Rivières, [1993] 1 S.C.R. 471 (S.C.C.) at para 47: **RPBOA, Tab 7**

36. With this finding, the Supreme Court of Canada has established safeguards against what would otherwise be a potentially absurd situation: if a party wished to review a decision where the arbitrator ignored or failed to consider important evidence, but there is no record and the evidence is not referred to in the decision, without submitting the important evidence by affidavit

there would be no way for the party seeking judicial review to show the evidence the arbitrator ignored or failed to consider and prove its claim of a breach of natural justice.

37. If this were the case, an arbitrator would be able to make whatever decision he or she so chose, and provided he or she simply did not reference the evidence he or she wished not to consider, the court would have no basis for reviewing the decision for procedural fairness or natural justice as there would be no way to get the ignored evidence before the court. Adopting such an interpretation of *Keeprite* would essentially render administrative decision makers immune to judicial review in certain circumstances. A shackle on the constitutionally protected authority of the courts is not permissible and cannot have been intended by the legislature or by the court in *Keeprite*.
38. In keeping with this, courts have found that in some circumstances, though not all, the absence of a transcript in and of itself can violate the rules of natural justice. To be a violation of natural justice, the absence of the transcript must essentially deny the applicant a ground of review, or not provide the court with an adequate record upon which to base its decision.

S.C.F.P., Local 301 c. Québec (Conseil des services essentiels), [1997] 1 S.C.R. 793, 1997 CarswellQue 83 at para 81: **RPBOA, Tab 8**

The Affidavit Evidence is Required to Disclose Breach of Natural Justice

39. The second circumstance in which affidavit evidence is admissible on an application for judicial review is to disclose a breach of natural justice that cannot be proven by mere reference to the record.

Utilities Kingston, supra at para 18: **RPBOA, Tab 2**

40. Affidavit evidence in such instances will be necessary so that the argument of the party seeking judicial review on the breach of natural justice can be fully understood and considered by the court.

PIPSC, supra at para 12: **RPBOA, Tab 3**

41. In the affidavit tendered by APUO in support of its application for judicial review, Natasha Udell makes five main points:

- (a) Paragraphs 3-13: Maureen Robinson's report was not to be considered evidence upon which the arbitrator could rely, and in fact, Ms. Robinson had been hired by the University to monitor Professor Rancourt's activities, both within and outside the University of Ottawa. Ms. Robinson sent e-mails to Dean of Science, André Lalonde admitting that she had a personal grudge against him and likening her surveillance to posing as a young girl to catch a pedophile. Professor Rancourt provided testimony that opposed the material in Ms. Robinson's report, that was not evidence before the arbitrator;
- (b) Paragraphs 14-23: Dean Lalonde made various concessions during his cross-examination;

- (c) Paragraphs 24-25: Professor Rancourt provided extensive testimony on his methodology;
- (d) Paragraphs 26-28: Students P and V made considerable concessions in their respective cross-examinations; and
- (e) Paragraph 29: that there was no evidence of any policy or procedural rules adopted by a faculty council and approved by the University Senate within the meaning of the collective agreement.

- 42. All of these points are necessary to show this Court that the Arbitrator failed to consider significant evidence and, indeed, could not have considered that evidence and reached the conclusion he reached. In the alternative, it is necessary to demonstrate that the Arbitrator's conclusions were unreasonable.
- 43. With respect to point (a), the Arbitrator failed to consider Ms. Robinson's documented bias against Professor Rancourt, as well as Professor Rancourt's testimony, which was uncontradicted with respect to the Queen's University speech.
- 44. With respect to points (b) and (c), the arbitrator failed to consider the evidence given by Dean Lalonde with respect to the University's grading policy, the approval of Professor Rancourt's grades, the rights of professors, as well as Professor Rancourt's testimony on how he graded his students.

45. With respect to point (d), the Arbitrator failed to consider evidence given the two students with respect to an alleged promise by Professor Rancourt that the students would receive an A+ in the course.

46. If the Arbitrator rejected or failed to consider relevant evidence in such a manner as to impact the fairness of a proceeding, there will be a breach of natural justice.

Syndicat, supra at para 47: **RPBOA, Tab 7**

47. In this case, the arbitrator ignored or did not consider certain critical pieces of evidence. That evidence had a fundamental impact on the fairness of the proceeding: it resulted in Professor Rancourt's dismissal being upheld. Therefore, the failure of the Arbitrator to consider this evidence is a breach of procedural fairness and natural justice.

48. On the record before this Court, however, there is no evidence of such a breach, as the Arbitrator failed to reference or acknowledge the evidence in his decision, and there is no transcript of the proceeding.

49. Where the lack of transcript denies an applicant a ground of review or does not provide the court with an adequate record upon which to base its decision, there is a further breach of natural justice.

S.C.F.P., Local 301, supra at para 81: **RPBOA, Tab 8**

50. APUO's grounds for judicial review can only be fully understood and considered by the Court if paragraphs 14-28 of Natasha Udell's affidavit are before this court. Otherwise, the court will be unable to assess APUO's argument given the lack of transcript.

51. In the Udell affidavit, APUO is not seeking to reframe and/or recreate the evidence that was before the Arbitrator, nor is it, with its application for judicial review, asking this court to reweigh the evidence already weighed and assessed by the Arbitrator and supplant its ruling for that of the Arbitrator. Rather, APUO is asking this court to determine whether it was a breach of natural justice for the Arbitrator to ignore or not consider the evidence APUO believes is significant in reaching his decision.
52. Accordingly, it is not only appropriate under the tenets of *Keeprite*, but absolutely necessary taking into consideration natural justice, for the Udell affidavit to remain before the court in APUO's application for judicial review.

PART IV - ORDER SOUGHT

53. APUO respectfully seeks the following orders:

- (a) That this Motion to strike the Affidavit of Natasha Udell be dismissed;
- (b) An order granting APUO its costs for this Motion; and
- (c) Such further and other relief as counsel may advise and this Honourable Court permits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24TH day of September, 2015



Sean T. McGee, Counsel for the Applicant, APUO
(Responding Party)

SCHEDULE A – LIST OF AUTHORITIES REFERRED TO

- 1- *Keeprite Workers' Independent Union v. Keeprite Products Ltd.*, 1980 CarswellOnt 762, 29 O.R. (2d) 513 (Ont. C.A.)
- 2- *142445 Ontario Ltd. v. I.B.E.W., Local 636*, 2009 CarswellOnt 2701, 251 O.A.C. 62
- 3- *Professional Institute of the Public Service of Canada v. Unifor, Local 3011*, 2015 ONSC 3748
- 4- *Denby v. Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal)*, 2005 CarswellOnt 6724, 204 O.A.C. 146
- 5- *Brookfield Lepage Johnson Controls Facilities Management Services Ltd. v. Ontario (Labour Relations Board)*, 2007 CarswellOnt 709, 221 O.A.C. 70
- 6- *Warren v. Ontario (Labour Relations Board)*, 2012 ONSC 1735, 2012 CarswellOnt 4796
- 7- *Syndicat des employés professionnels de l'Université du Québec à Trois-Rivières c. Université du Québec à Trois-Rivières*, [1993] 1 S.C.R. 471 (S.C.C.)
- 8- *S.C.F.P., Local 301 c. Québec (Conseil des services essentiels)*, [1997] 1 S.C.R. 793, 1997 CarswellQue 83

SCHEDULE B – STATUTES REFERRED TO

Judicial Review Procedure Act

R.S.O. 1990, CHAPTER J.1

Applications for judicial review

2. (1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

Error of law

(2) The power of the court to set aside a decision for error of law on the face of the record on an application for an order in the nature of certiorari is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision. R.S.O. 1990, c. J.1, s. 2 (2).

Lack of evidence

(3) Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on evidence admissible before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review. R.S.O. 1990, c. J.1, s. 2 (3).

ASSOCIATION OF PROFESSORS OF THE
UNIVERSITY OF OTTAWA (APUO)

- and -

UNIVERSITY OF OTTAWA

Applicant

Respondent

Court File No. 14-2022

	<i>ONTARIO</i> SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT) Proceeding commenced at OTTAWA
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